



5001-06-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 252**

**[Docket DARS-2018-0051]**

**RIN 0750-AK34**

**Defense Federal Acquisition Regulation Supplement: Update of Clause on Section 8(a) Direct Award (DFARS Case 2018-D052)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove an obsolete requirement from a DFARS clause.

**DATES:** Effective **[Insert date of publication in the FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer D. Johnson, telephone 571-372-6100.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is amending the DFARS to remove an obsolete requirement from the clause at DFARS 252.219-7009, Section 8(a) Direct Award. The clause currently requires 8(a) contractors to obtain written approval from the Small Business Administration (SBA)

and the contracting officer prior to subcontracting the performance of any contract requirements. This requirement no longer exists in SBA's regulations on the 8(a) Business Development Program at 13 CFR part 124.

## **II. Discussion and Analysis**

This rule deletes paragraph (c)(2) of the clause at DFARS 252.219-7009. This paragraph contains the obsolete requirement for an 8(a) contractor to obtain written approval from SBA and the contracting officer prior to subcontracting performance of contract requirements. The remaining paragraphs (c) and (c)(1) are combined into a single paragraph (c). This rule also updates an outdated reference in paragraph (c)(1) and makes other minor editorial changes.

## **III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This rule revises the clause at DFARS 252.219-7009, Section 8(a) Direct Award. This clause currently applies to solicitations and contracts below the simplified acquisition threshold (SAT) and to the acquisition of commercial items, including commercially available off-the-shelf (COTS) items, as defined at Federal Acquisition Regulation (FAR) 2.101.

DoD is continuing to apply this clause to solicitations and contracts below the SAT and to the acquisition of commercial

items, including COTS items. This rule merely removes an obsolete requirement to obtain approval from the contracting officer and SBA prior to subcontracting work under an 8(a) contract. Not applying this guidance to contracts below the SAT and to the acquisition of commercial items, including COTS items, would exclude contracts with 8(a) Program participants that are intended to be covered by this rule and undermine the overarching purpose of the rule. Consequently, DoD plans to apply the rule to contracts below the SAT and to the acquisition of commercial items, including COTS items.

#### **IV. Expected Cost Savings**

This rule impacts only 8(a) Program participants who do business, or want to do business, with DoD. Currently, 8(a) Program participants who have DoD contracts must obtain written approval from SBA and the contracting officer before subcontracting the performance of any contract requirements in accordance with DFARS clause 252.219-7009. Removal of the requirement to obtain this approval is expected to result in savings for DoD contractors who are 8(a) Program participants.

The following is a summary of the estimated public and Government cost savings calculated in perpetuity in 2016 dollars at a 7-percent discount rate:

| SUMMARY       | Public        | Government    | Total          |
|---------------|---------------|---------------|----------------|
| Present Value | (\$9,713,886) | (\$4,856,943) | (\$14,570,829) |

|   |             |             |               |
|---|-------------|-------------|---------------|
| Annualized Costs                                      | (\$679,972) | (\$339,986) | (\$1,019,958) |
| Annualized Value Costs (as of 2016 if Year 1 is 2019) | (\$555,060) | (\$277,530) | (\$832,590)   |

To access the full Regulatory Cost Analysis for this rule, go to the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov), search for "DFARS Case 2018-D052," click "Open Docket," and view "Supporting Documents."

#### **V. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **VI. Executive Order 13771**

This final rule is considered to be an E.O. 13771 deregulatory action. The total annualized value of the cost savings is \$832,590. Details on the estimated cost savings can be found in section IV. of this preamble.

#### **VII. Publication of This Final Rule for Public Comment Is Not Required by Statute**

The statute that applies to the publication of the FAR is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule merely removes an obsolete requirement from the DFARS, updates an outdated reference and makes minor editorial changes.

#### **VIII. Regulatory Flexibility Act**

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under

41 U.S.C. 1707(a)(1) (see section VII. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

#### **IX. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **List of Subjects in 48 CFR Part 252**

Government procurement.

**Jennifer Lee Hawes,**

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

#### **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

1. The authority citation for part 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Amend section 252.219-7009 by—

a. Removing the clause date of “(SEP 2007)” and adding “(OCT 2018)” in its place;

b. In paragraph (a), removing "Partnership Agreement dated" and adding "Partnership Agreement" in its place; and

c. Revising paragraph (c) to read as follows:

**252.219-7009 Section 8(a) direct award.**

\* \* \* \* \*

(c.) The 8(a) Contractor agrees that it will notify the Contracting Officer, simultaneous with its notification to the SBA (as required by SBA's 8(a) regulations at 13 CFR 124.515), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern.

Consistent with section 407 of Public Law 100-656, transfer of ownership or control shall result in termination of the contract for convenience, unless the SBA waives the requirement for termination prior to the actual relinquishing of ownership and control.

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